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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1922.

No. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER TRANSPORTATION ACT, 1920,
Plaintiff in Error,

vs.

FARMERS' CO-OPERATIVE EQUITY COMPANY,
Defendant in Error.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

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(Italics throughout are ours.)

I.

MERE SOLICITATION OF BUSINESS IN A STATE BY A FOREIGN CORPORATION DOES NOT MAKE IT PRESENT TO SUCH AN EXTENT AS TO BE AMENABLE TO SERVICE OF PROCESS EVEN THOUGH A STATE STATUTE AS INTERPRETED BY THE SUPREME COURT OF THE STATE PROVIDES THAT SOLICITATION SHALL MAKE IT SUABLE THERE, AND THE FACT THAT THE JUDGMENT ON SUCH SERVICE IS OBTAINED IN A STATE INSTEAD OF A FEDERAL COURT IS OF NO IMPORTANCE.

On page 2 of the brief of the defendant in error the following language is used:

"When a corporation is present in a State and

> upon what agent or representative service of process can be had, are matters that properly come within the legislative powers of the State, and the interpretation of the Supreme Court of the State of the State statute covering this subject is conclusive. The question of whether the service is valid is not limited to the question of whether what the corporation is doing in the State constitutes 'doing business' under decisions which have passed upon the scope of this term where there was no such statute."

However, as we shall show, the statement is not supported by the decisions cited, and it is contrary to the rule laid down and repeatedly reaffirmed by this court.

A leading case on the subject is *St. Clair* v. *Cox*, 106 U. S. 350, where there was offered in evidence a certified copy of a judgment showing that service of process was made by delivering a copy to an agent of the foreign corporation, which was the defendant. The record was excluded, and in holding such action proper the court said:

> "Without considering whether authorizing service of a copy of a writ of attachment as a summons on some of the persons named in the statute—a member, for instance, of the foreign corporation, that is, a mere stockholder—is not a departure from the principle of natural justice mentioned in *Lafayette Ins. Co.* v. *French*, which forbids condemnation without citation, it is sufficient to observe that *we are of opinion that when service is made within the State upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record—either in the application for the writ, or accompanying its service, or in the pleadings or the finding of the court—that the corporation was engaged in business in the State.*"

In *Pennoyer* v. *Neff*, 95 U. S. 714, the court considered the effect of a personal judgment obtained in the State of Oregon in strict accordance with state statutes but

without personal service on the defendant, service being had by publication only.

The court, after referring to several cases holding that if suit were thereafter brought on such a judgment no recovery could be had, said on page 732 *et seq.*:

> "In several of the cases, the decision has been accompanied with the observation that a personal judgment thus recovered has no binding force without the State in which it is rendered, implying that in such State it may be valid and binding. But if the Court has no jurisdiction over the person of the defendant by reason of his nonresidence, and, consequently, no authority to pass upon his personal rights and obligations; if the whole proceeding, without service upon him or his appearance, is *coram non judice* and void; if to hold a defendant bound by such a judgment is contrary to the first principles of justice—it is difficult to see how the judgment can legitimately have any force within the State. The language used can be justified only on the ground that there was no mode of directly reviewing such judgment or impeaching its validity within the State where rendered; and that, therefore, it could be called in question only when its enforcement was elsewhere attempted. In later cases, this language is repeated with less frequency than formerly, it beginning to be considered, as it always ought to have been, that *a judgment which can be treated in any State of this Union as contrary to the first principles of justice, and as an absolute nullity, because rendered without any jurisdiction of the tribunal over the party, is not entitled to any respect in the State where rendered.* * * *
>
> Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law."

The rule above laid down has been followed in a long

line of decisions. Thus, in *St. Louis S. W. Ry. Co.* v. *Alexander*, 227 U. S. 218, the court said on page 226:

> "The other question as to the presence of the corporation within the jurisdiction of the court in which it was sued raises more difficulty. A long line of decisions in this court has established that in order to render a corporation amenable to service of process in a foreign jurisdiction it must appear that the corporation is transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof. *The Lafayette Ins. Co.* v. *French*, 18 How. 404; *St. Clair* v. *Cox*, 106 U. S. 350; *Goldey* v. *Morning News*, 156 U. S. 518; *Conley* v. *Mathieson Alkali Works*, 190 U. S. 406; *Geer* v. *Mathieson Alkali Works*, 190 U. S. 428; *Peterson* v. *Chicago, Rock Island & Pac. Ry. Co.* 205 U. S. 364; *Green* v. *Chicago, Burlington & Quincy Ry. Co.* 205 U. S. 530; *Mechanical Appliance Co.* v. *Castleman*, 215 U. S. 437; *Herndon-Carter Co.* v. *Norris, Son & Co.* 224 U. S. 496."

The same rule was reiterated in *Peoples Tobacco Co.* v. *American Tobacco Co.* 246 U. S. 79.

And it was also asserted in *Chipman, Ltd.* v. *Jeffery Co.* 251 U. S. 373, where it was contended that an action could be maintained on a cause of action arising outside of the State of New York, under service made on an agent designated prior to that time for such purpose under the New York statute requiring the designation of an agent for the service of process as a condition precedent to doing business in that state, notwithstanding the fact that before the suit was brought the defendant had ceased to do business there, although it had not revoked the authority of its agent.

In holding the service invalid the court, out of deference to counsel, showed by its opinion that the courts of New York held that the statute was of no effect unless the company was doing business but expressly held that

that question was of federal cognizance notwithstanding the decision of the state court, saying:

> "*In resting the case on New York decisions we do not wish to be understood that the validity of such service as here involved would not be of federal cognizance whatever the decision of a state court, and refer to Pennoyer* v. *Neff*, 95 U. S. 714; *St. Louis Southwestern Ry. Co.* v. *Alexander, supra; Philadelphia & Reading Ry. Co.* v. *McKibbin*, 243 U. S. 264; *Meisukas* v. *Greenough Red Ash Coal Co.* 244 U. S. 54; *People's Tobacco Co.* v. *American Tobacco Co.* 246 U. S. 79."

In *Reynolds* v. *M. K. & T. Ry. Co.* 224 Mass. 379, 113 N. E. 413, where there was also involved a state statute, the Supreme Court of Massachusetts said:

> "The precise point to be decided is whether the defendant railway company was 'engaged in or soliciting business in this commonwealth' within the meaning of the pertinent statute. *The question involved is a federal one upon which the decisions of the United States Supreme Court are controlling.* That court has said that 'each case of this kind must depend on its own facts.' *Washington-Virginia Ry.* v. *Real Estate Trust*, 238 U. S. 185, 186, 35 Sup. Ct. 818 (59 L. Ed. 1262). That court has not undertaken to formulate any general rule defining what transactions are essential to the doing of business in the sense which will render the one conducting it liable to service of process. It has gone no further than to say that as to corporations:
>
> 'The business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served.' *St. Louis Southwestern Ry.* v. *Alexander*, 227 U. S. 218, 227, 33 Sup. Ct. 245, 248 (57 L. Ed. 486, Ann. Cas. 1915B, 77)."

That case was affirmed by this court (255 U. S. 565), not on the strength of the state statute but under authority of the Alexander case, where the question of doing business was the only one considered.

The case of *New York L. E. & W. Railroad Co.* v. *Estill*, 147 U. S. 591, from which opposing counsel quoted at length on pages 3 and 4 of their brief, is not at all in point, but is in line with the other decisions of this court. The sentence next following the excerpt quoted by counsel for defendant in error reads as follows (608):

> "The principle applicable under such circumstances is that, if the corporation does business in the state, it will be presumed to have assented to the statute and will be bound accordingly."

From the above it clearly appears that a state statute of the character in question is without effect, particularly as to causes of action arising without the state, and if the company is not doing or has ceased to do business therein a suit cannot be maintained.

This court has not held, where writ of error has been prosecuted, that service and judgment would be valid in a state court under facts which would render the same void because of conflict with the Fourteenth Amendment and the Commerce Clause in a case originally brought in or removed to a federal court.

On page 6 of brief of defendant in error, the following statement is made:

> "Even though such service may not be good in a federal court, where the *Green case* was instituted, it does not follow that it is not good in a state court under a statute like the one in question. In *Mechanical Appliance Co.* v. *Castleman*, 215 U. S. at p. 442, the court quoted with approval from *Goldey* v. *The Morning News*, 156 U. S. 518, to the effect that while service of mesne process from a court of a state may be valid by the legislative acts and judicial decisions of that state, yet upon removal of the case to the federal court it may be held by the latter court that such service has no validity."

An examination of the decisions of this court on the question discloses that no such rule has been laid down. It is true that in *Green* v. *C. B. & Q. Ry. Co. supra* (205 U. S. 530, 533), the court said:

> "In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver, &c., Railroad Co.* v. *Roller*, 100 Fed. Rep. 738, and *Tuchband* v. *Chicago, &c., Railroad*, 115 N. Y. 437. The facts in those cases were similar to those in the present case. But in both cases the action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts."

It is to be noted that neither of those cases went to this court, and how foreign this observation of the court was to what was actually decided will appear from an examination of the decision itself, and the following comment upon it by the District Court in *West* v. *C. N. O. T. P. Ry. Co.* 170 Fed. 349, 355, is appropriate:

> "It is insisted that the qualifying expression in the foregoing extract as to *Denver & R. G. R. Co.* v. *Roller* and *Tuchband* v. *Chicago, etc., Railroad* to the effect that 'in both cases the action was brought in the state courts, and the question was the interpretation of the state statute and the jurisdiction of the state courts,' should be taken as a suggestion by the Supreme Court, at least, if not a direct holding, that the question of the sufficiency of the service was one to be controlled by state statutes and decisions. It could hardly be supposed that by a mere suggestion such as this the Supreme Court would reverse all its previous decisions on this subject. After having held in a number of cases that the Circuit Court will decide for itself as to the sufficiency of the service and as to whether the corporation was doing business in the state where sued, it would hardly in this way reverse all of its former rulings. *As a matter of fact the Tuchband case was a case in the state courts, and was never in the federal courts at all. In the Roller case the person*

served was a general agent in San Francisco of the defendant foreign corporation, and it would appear that both the Circuit Court and the Circuit Court of Appeals decided that he was such an agent and doing such business for the company in California as made it subject to suit in that state, and that the general agent was a person upon whom service could be properly perfected, and this decision was without reference to any ruling in the state court, but was made upon the facts there appearing as to the character of the agent and his business."

In *Goldey* v. *Morning News*, 156 U. S. 518, 522, this court said:

> "Service of mesne process from a court of a state, not made upon the defendant or his authorized agent within the state, although there made in some other manner recognized as valid by its legislative acts and judicial decisions, can be allowed no validity in the Circuit Court of the United States after the removal of the case into that court, pursuant to the acts of Congress, unless the defendant can be held, by virtue of a general appearance or otherwise, to have waived the defect in the service, and to have submitted himself to the jurisdiction of the court."

While this was a plain declaration that the federal courts would not be bound by the legislative acts and judicial decisions of a state in reference to service of process, it was not a statement that if a judgment on such service were secured in the state court and the action of the state court brought to this court for review, the judgment would be upheld on the strength of state statutes or decisions.

In the same case it is said (521):

> "So a judgment rendered in a court of one State, against a corporation neither incorporated nor doing business within the State, must be regarded as of no validity in the courts of another State, or of the United States, unless service of process was made in the first State upon an agent appointed to act there for the corporation, and not merely upon an officer

> or agent residing in another State, and only casually within the State, and not charged with any business of the corporation there."

If a judgment procured under such circumstances could not be enforced in the courts of another state because the defendant was not afforded due process of law, then how can it be enforced and held valid by this court when rendered in a state court and afterwards brought to this court for review as has been the case at bar? The various decisions of this court holding that when cases originally are brought in or are removed to a federal court, the court will not be bound by the state statutes or decisions upon the question of service of process, but will determine the question for itself, are equivalent to holding that the same question will be open to defendant when the case in a state court is brought to this court by proper appellate proceedings.

The right not to be sued unless doing business in a state or when such action would be contrary to the Commerce Clause or the Fourteenth Amendment is a substantive right arising under the Federal Constitution, which, of course, may be asserted alike in state or federal courts.

It is true that matters of procedure may differ in state and federal courts. For instance, there may be a state law under which the entry of a special appearance for the purpose of questioning jurisdiction may amount to a general appearance and preclude the defendant from thereafter questioning it in the state courts, but that rule would not be recognized in the federal court.

> *Mexican Central Railway* v. *Pinkney*, 149 U. S. 194.

It will be observed, however, that the statute upon this subject was held to be a mere matter of procedure

the enforcement of which did not violate the Due Process of Law Clause, whereas, this court has uniformly held that a judgment obtained against a corporation not present in the state deprived the defendant of property without due process of law.

In this connection it may be well to state that under Minnesota practice as in the federal courts the filing of a special appearance and motion to dismiss followed by an answer objecting to the jurisdiction of the court but going to the merits does not waive the jurisdictional question, but preserves the same for review upon appeal from final judgment.

State ex rel. v. *District Court*, 26 Minn. 233.

See, also, sections 389 and 482, Vol. I, Dunnell's Digest, and cases cited.

The unsoundness of plaintiff's position is strikingly shown by applying it to the following cases:

1. The case of an employee under the Federal Employers' Liability Act for damages of $5,000 for personal injuries, which, because of the provisions of that act, cannot be removed. Assume that in such case service is made under the Minnesota statute and that motion to set aside the same for want of jurisdiction, because the company was not doing business in Minnesota, is overruled solely because of the state statute, and after answer and trial a judgment for $5,000 is rendered; that under the state practice filing an answer and trying the case on the merits does not waive the jurisdictional point theretofore raised; that an appeal is taken to the state Supreme Court and upon affirmance, solely on the strength of the state statute, although the company was not "doing business" within the meaning of that term as defined by the federal courts, the case is brought to this court by writ of error.

2. The case of a passenger who is a citizen of some state other than that of the company and who brings suit in a state court of Minnesota for $5,000 damages for personal injuries. Assume that in that case service was made under the Minnesota statute; the case removed to the proper federal District Court; motion to quash there made on the same grounds as in the employee case and sustained, notwithstanding the state statute, and that ruling brought to this court for review at the same time as the employee case.

Under such circumstances, which are not at all improbable, if plaintiff's contention were held to be correct, then this Court would be bound to affirm both cases, thus holding that a foreign corporation could be sued in Minnesota and a valid judgment rendered in a case which could not be removed to the federal courts, but that, under the same facts as to doing business, such corporation could not be sued in a case which could be and was removed to the federal court. Beyond a doubt, this Court has been moved by such considerations to hold that a substantive right, to wit, the right of a foreign corporation not to be sued in a State unless doing business there, is one of federal cognizance, which must be decided in any court, where properly called in question, by applying to the facts the rules prescribed and laid down by this Court and not a rule laid down by a state statute.

The question of whether the judgment and statute in question are void, because in conflict with the Commerce Clause and the Fourteenth Amendment, is in nowise affected by the Minnesota statute or by the fact that the action was brought in and judgment rendered by a state court of Minnesota instead of a federal court.

II.

THE SPECIAL FINDING MADE BY THE TRIAL COURT THAT THE SANTA FE WAS ENGAGED ONLY IN THE SOLICITATION OF INTERSTATE FREIGHT AND PASSENGER TRAFFIC CANNOT BE QUESTIONED HERE FOR THE FIRST TIME.

As pointed out on page 15 of our main Brief, the evidence showed and the trial court found that the only business done by the Santa Fe in Minnesota was "soliciting and obtaining interstate freight and passenger traffic" (Trans., 26, fol. 49), and the Supreme Court of Minnesota said in its opinion (Trans., 32):

> "The railway company neither owns nor operates any line of railway in this state, but maintains in this state an agent for the solicitation of freight and passenger traffic over its lines outside of this state. It does no business in this state except to maintain such resident agent and solicit such traffic."

Notwithstanding the fact that the findings of the trial court were not attacked in any way in the state Supreme Court, and although the state Supreme Court held the facts showed the business done in Minnesota by the Santa Fe amounted only to solicitation, and but for the state statute the case was the same as that of *Green* v. *C. B. & Q.* 205 U. S. 530, yet opposing counsel have quoted various excerpts of testimony from the record and argued that they show that the Santa Fe was "doing business" and was present in the state, as was the railroad company in the case of *St. L. S. W. Ry. Co.* v. *Alexander*, 227 U. S. 218, so as to be subject to suit, regardless of the effect of the statute on the strength of which the judgment was entered and affirmed below.

It is true that this Court said in *Philadelphia & Reading Railway Company* v. *McKibben*, 243 U. S. 264, 265:

> "Whether the corporation was doing business

within the state and whether the person served was an authorized agent are questions vital to the jurisdiction of the court. A decision of the lower court on either question if duly challenged is subject to review in this court; and the review extends to findings of fact as well as to conclusions of law. *Herndon-Carter Co.* v. *Norris, Son & Co.* 224 U. S. 496; *Wetmore* v. *Rymer*, 169 U. S. 115."

But it will be noted in that case that the lower court found the carrier was doing business and that was the finding of facts which was challenged by the losing party.

In both of the cases cited by the court in the *McKibben* case, *supra*, the court had quashed the service and dismissed the actions.

Its action in so doing was challenged on review, which made it necessary for the court to examine the testimony.

Where a cause is tried by the court and facts are specially found, the Minnesota Supreme Court follows the general rule that, unless the findings are questioned or appealed from, they cannot be attacked or enlarged by reference to the testimony, the appellate court being confined in its review to the facts so found.

Jordan v. *Secombe*, 3 Minn. 220; 22 N. W. 383.
Kinney v. *Mathias*, 81 Minn. 64; 83 N. W. 497.
Smith v. *Kipp*, 49 Minn. 119; 51 N. W. 656.
Williams v. *Schembri*, 44 Minn. 250; 46 N. W. 403.
Miller v. *Chatterton*, 46 Minn. 338; 48 N. W. 1109.
Prosser v. *Manley*, 122 Minn. 488; 142 N. W. 876.
Mannheimer Brothers v. *The Kansas Casualty & Surety Co.* 147 Minn. 350; 180 N. W. 229.
Pittsburgh Plate Glass Company v. *Brown*, ... Minn. .....; 188 N. W. 569.

See, also:

Corpus Juris, Appeal & Error, 4 C. J. 2548.

We do not think that the defendant in error is in any position to question the findings heretofore made, but even if they be reviewed it plainly appears that there is nothing in the entire evidence in the case which would justify affirmance of the judgment on the strength of the *Alexander* case, as we shall now proceed to show.

III.

THE SANTA FE WAS NOT ENGAGED IN DOING BUSINESS UNDER THE FACTS DISCLOSED BY THE RECORD AND THE DECISIONS OF THIS COURT CITED BY OPPOSING COUNSEL IN SUPPORT OF THAT BRANCH OF THEIR ARGUMENT.

Opposing counsel contend that because the soliciting agent in this case stated that he sometimes forwarded claims to the proper "people" in Chicago or Topeka, and procured information from the proper officials of the Santa Fe as to the location of shipments on its lines, and quoted rates from tariffs on file with the Interstate Commerce Commission, and forwarded to proper officials for attention diversion orders, the *Green* case and other cases cited in our opening brief have no bearing on the decision of the question here involved.

If the evidence in this regard is to be considered by this court, in face of the specific finding of the court below that the only business done by the Santa Fe agent was to solicit traffic, such evidence would not establish the doing of business by the railway company so as to make it suable in Minnesota.

Defendant in error does not and could not contend that the evidence showed the claim on which this suit was brought was forwarded by Jansen to proper Santa Fe officials for attention; much less, that it was only after

negotiations for the settlement thereof through Jansen had failed, that suit was brought and process was served on him. That was what happened in the *Alexander* case.

Furthermore, it would be difficult, indeed, to solicit business successfully unless a solicitor would be courteous enough, when requested, to forward claims to the proper claim department official for attention. A solicitor in any line of business must and, commonly, does do this, regardless of whether he is endeavoring to get business for a railroad company or a lumber company, a tobacco company or a clothing or grocery company.

In so far as furnishing information as to rates contained in tariffs is concerned, that, of course, is something which everyone is presumed to know. *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639.

The fact remains, however, that tariffs are somewhat complicated and it would be a harsh rule, indeed, which would hold that to assist a shipper in ascertaining a lawful rate could only be done at the hazard or upon the condition that the company subject itself to suit in Minnesota.

Certainly, a solicitor in any line of business must know and inform his customer how much the latter will have to pay for a given service or for any goods he is selling. A salesman who could not do this would not be able to secure any business for his company.

With respect to furnishing information to shippers as to the location of their shipments, that, by no stretch of the imagination, could constitute doing business.

When diversion orders are given it is the common practice also to surrender the original bill of lading and receive in exchange a bill of lading, which by its terms is not effective until the freight reaches the Santa Fe.

The issuance of such bills of lading was held in the *Green* case not to be "doing business" and, consequently, the mere forwarding of diversion orders without issuing exchange bills of lading could not under any possible theory be held to be "doing business."

In reference to diversion, the Commission said in *Central Commercial Co.* v. *L. & N. R. R. Co.* 27 I. C. C. 114, 115:

> "Diversion and reconsignment are required in the conduct of modern business and are to be regarded as commercial necessities."

And in *Charles Becker* v. *P. M. R. R. Co.* 28 I. C. C. 645, 651, the following language is used:

> "The primary advantages are found in the increase in the fluidity and regularity of the movement of commodities, the important elimination of economic waste in the reduction of the handling of goods between the producer and the consumer, the increase in celerity of movement, and the facilitation of the direction of commodities to the point of most active demand."

On large railroad systems like the Santa Fe, a number of different agents are located at various points with authority to execute diversion orders. To forward a diversion order to the proper agent in each case requires a knowledge of the location of the shipment and, also, a specific knowledge of Santa Fe officials and movement of traffic over its railroad. Such knowledge is possessed by a soliciting agent and when diversion orders or requests are given to him for forwarding to the proper official for execution, the result is that mistakes are obviated, delays avoided and the diversion facilitated.

In the *McKibben* case, *supra*, it appeared that the railroad company's name was inserted in the telephone directory and appeared at various points on the terminal. Commenting on this, the court said (p. 267):

> "These signs on the terminal, this insertion in the telephone directory, and the information given in response to enquiries at the ticket office or over the telephone *are all designed to facilitate and encourage travel and for the convenience of the public.*"

That language aptly characterizes Jansen's activities. The fact that he performs such services, doubtless, increases Santa Fe traffic, but for none of them does the company receive any direct payment and their convenience to the shipping and traveling public is apparent. During federal control soliciting agents were withdrawn and shippers were forced to place their diversion orders and obtain their information through some railroad operating official. This caused great complaint and at the expiration of federal control, as appears by this record, railroads restored the former service, and at the present time, in all large cities, shippers and passengers may obtain such information and service from soliciting agents of practically all railroads in the country. Each possesses information as to his particular road, which it would not be possible for agents of railroads running into that city to have because, naturally, the agent of one railroad could not be fully informed as to all other railroads in the United States.

In the *Green* case, after detailing the matters done and performed by the railroad agent who was served, and by the various clerks and traveling passenger and freight agents who worked out of his office, the court said:

> "It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers."

It is also obvious that the Santa Fe was at the time of service of the writ herein doing a considerable business in Minnesota, but we earnestly contend it was do-

ing no more there than is commonly done by solicitors for railroad companies everywhere, and by salesmen and drummers for other corporations, who solicit interstate commerce in foreign states. If a salesman for any company goes to a regular customer and the customer has a claim which he wants transmitted to the proper department, naturally, the salesman would do it. If the goods the customer has ordered are not received, he gets in touch with the salesman for the purpose of finding out what is the matter. If he wants to countermand or change his order, he also takes that up with the salesman.

All of these things are merely incidental to the main business of solicitation and occupy a comparatively small portion of a salesman's time. But they are so closely connected with the business of solicitation as to be a part of it, and so are the incidental things performed by Jansen, as shown by the record in this case.

The solicitor or salesman has no authority to bind his principal in respect of these collateral matters or to act on them, and he simply transmits them to the proper official outside the state, who is authorized and empowered to take such action as may be proper in any particular case.

To hold that the facts disclosed by this case amount to doing business would be to hold that every railroad company and every other foreign corporation maintaining soliciting offices in other states was doing business therein, because if they did less it would be absolutely impossible for them to compete with domestic concerns represented by salesmen who were not so limited in matters about which they could safely talk with customers or write to their principals.

Cases cited by defendant in error are not authorities for holding on this record that the Santa Fe was doing business in Minnesota.

Defendant in error lays great stress on the *Alexander* case and strenuously insists that this case is governed by it.

But as we have already pointed out, the court there found that the agent on whom process was served was engaged in negotiating the settlement of claims and that it was not until his attempted negotiation of settlement of the particular claim on which suit was brought fell through that he was served with process.

The facts in the *Alexander* case have, therefore, no application to the case at bar.

Great reliance also seems to be placed on the case of *M. K. & T. Ry. Co.* v. *Reynolds*, 255 U. S. 565, affirming the decision of the Supreme Judicial Court of Massachusetts, 224 Mass. 379, 113 N. E. 413.

But a reference to that case shows that it is dissimilar and not controlling. The court seems to have concluded from the fact that because he was paid a commission on all tickets sold by agents of other railroads, not only in Massachusetts but in all New England, and because agents for such roads constantly kept in touch with him, he was to some extent managing and directing such sales.

The agent in that case also collected money and transmitted the same to the company.

Collecting money on behalf of the company was the principal thing which led the court to hold the defendant was doing business in the case of *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, which case is also relied upon by opposing counsel.

That this is true appears from an examination of the case itself and also from the comment made thereon in *People's Tobacco Company* v. *American Tobacco Company*, 246 U. S. 79, where the Court on page 87 says:

> "The plaintiff in error relies upon *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, but in that case the facts disclosed that there was not only a continuous course of business in the solicitation of orders within the state, but there was also authority upon the part of such agents to receive payment in money, checks and drafts on behalf of the company, and to take notes payable and collectible at banks in Kentucky; these things, taken together, we held amounted to doing business within the State of Kentucky in such manner as to make the Harvester Company amenable to the process of the courts of that state."

A memorandum decision of this court much more in point than the *Reynolds* case is *Enterprise Railway Equipment Co.* v. *Norfolk & Western Ry. Co.* 245 U. S. 631.

An examination of the record in that case discloses that the Railway Company maintained at its Chicago office a general western freight agent, and a passenger agent; that claims were received, investigated and referred to the home office; that freight was traced for shippers; that checks payable to the Railway Company were received and transmitted to it, while checks made by it in favor of others were delivered by solicitors to the payees, and the employees at the Chicago office also collected undercharges on behalf of the company. The court, however, on the strength of the *Green* case, held all these incidental activities to be solicitation.

In *New York, L. E. & W. Railroad Co.* v. *Estill*, 147 U. S. 591, there was no contention made by the defendant that it was not doing business in Missouri; in fact,

the defendant claimed it was doing business in such manner there as to be a resident of the City of St. Louis, so that under the Missouri statute it was suable only at St. Louis and not in the Circuit Court of Saline County.

We have not commented on the state court cases cited by plaintiff, which have not been reviewed by this Court, because they are not authorities which would influence this Court in connection with the question it has decided in the *Peterson, Green, People's Tobacco Company* and *McKibben* cases.

Some reference is also made to certain insurance cases, such as *Commercial Mut. Acci. Co.* v. *Davis*, 213 U. S. 245, *Pennsylvania Lumbermen's Mut. Fire Insurance Co.* v. *Meyer*, 197 U. S. 407, *Connecticut Mut. Life Ins. Co.* v. *Spratley*, 172 U. S. 602.

In all those cases, the insurance company was doing within the state the business it was primarily organized and chartered to perform. The insurance companies were writing insurance on the lives and property of residents of those states. They were doing in those states all that they could do anywhere.

There were certain statutes providing for service of process in various manners. The statutes were valid because the companies were doing business in the state. If they had not done business there or were not doing business there at the time the suit was instituted, a different result would have been obtained.

While in the insurance business the company, ordinarily, does nothing unless a loss is sustained and claim made, for the handling of claims is one of the principal parts of its business, yet with a railroad company the situation is entirely different and the handling of claims is a mere incident to its main business. The fact, therefore, that a soliciting agent merely forwards some such

claims to the proper officer for attention, certainly, ought not to be held to constitute doing business within the state.

Furthermore, as shown by our main brief and by the record, the business solicited by Jansen was wholly interstate, and that brings us to the next point to which reply is necessary and that is the contention of defendant in error that the transaction of interstate business may be burdened by a statute requiring it to submit to suits on causes of action not arising in, or out of business transacted within the state, because in our view the contention is not tenable.

IV.

NEITHER IN THE INTERNATIONAL HARVESTER CASE NOR IN ANY OTHER CASE HAS THIS COURT HELD THAT A FOREIGN CORPORATION, TRANSACTING, WITHOUT LEAVE OR LICENSE FROM OR EXPRESS AGREEMENT WITH A STATE, A PURELY INTERSTATE BUSINESS WITHIN ITS BORDERS, COULD BE SUED THERE ON A CAUSE OF ACTION NOT ARISING IN OR OUT OF BUSINESS TRANSACTED IN SAID STATE.

While it is probably true that a state can prevent the transaction by a foreign corporation of other than interstate business within its boundaries, except upon condition that it submit itself to the jurisdiction of the courts of that state in suits brought on causes of action arising elsewhere, yet there are no cases holding that where a corporation is doing within the boundaries of a state the business which it is primarily chartered and organized to perform, provided that business be wholly an interstate business, it may be compelled against its will to subject itself to the jurisdiction of the courts in cases based on causes of action arising outside the

state and in no way involving business transacted therein. No such facts were involved in any cases decided by this Court. In our opening brief we conceded that in any state through which a railroad passes it may, local statutes permitting, be sued generally. This is true for the reason that in states through which railroads run they do also an intrastate business, and, furthermore, authority from the state is necessary before they can build and operate a railroad within the confines thereof.

Thus, in *Railroad Company* v. *Harris*, 12 Wall. 65, the Baltimore and Ohio Railroad Company, a Maryland corporation, under authority of an Act of Congress, had extended its railroad into the District of Columbia. Suit was brought by a passenger, who had purchased a ticket from the defendant's agent at the City of Washington for Belair, Ohio, to recover damages for personal injury sustained in the State of Maryland.

The corporation contended that it could not be sued in the District of Columbia, but the court, quite properly, held otherwise, and it will be observed that the cause of action arose out of business transacted in the District of Columbia where the ticket under which plaintiff became a passenger was purchased and at which point the passenger boarded the defendant's train.

In *Barrow Steamship Company* v. *Kane*, 170 U. S. 100, a citizen of New Jersey brought suit in the United States Circuit Court for the Southern District of New York against an alien steamship company, which ran a line of steamships between Londonderry and New York, having an office and doing business at the latter port. The action was to recover damages for personal injuries sustained by the plaintiff while boarding the ship at Londonderry.

It seems that an action could not be brought in the

state courts of New York by a nonresident to recover damages for personal injuries incurred outside the state.

In that case, this court held that the United States Circuit Court had jurisdiction because the alien corporation would wholly escape from answering for its default to a citizen of the United States unless jurisdiction was taken.

In the case at bar, however, the cause of action did not accrue outside of the United States, nor are the status or rights of an alien corporation in any way involved.

As shown by our opening brief, this Court has recognized the difficulties and burdens in connection with suits against corporations at points remote from the places where they do business and from the place where the causes of action arose.

> *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 203.
> *Simon* v. *Southern Railway Co.* 236 U. S. 115, 130.

See, also:

> *International Textbook Co.* v. *Pigg*, 217 U. S. 91.

In the last cited case the Court said on page 111:

> "This court held in *Chambers* v. *Baltimore & Ohio Railroad Co.* 207 U. S. 142, 148, that a state may, *subject to the restrictions of the Federal Constitution*, 'determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them.' "

But unless the Minnesota statute, both as to jurisdiction and character of controversies, conforms to the restrictions of the Federal Constitution, manifestly it must fall.

In *Mitchell Furniture Company* v. *Seldon Breck Company*, 257 U. S. 213, and in *Missouri Pacific Railroad Company* v. *Clarendon Co. supra* (257 U. S. 533), this court recently held that "*where possible*" it would exclude causes of action not arising out of business transacted by foreign corporations in a state from the operation of statutes requiring them to submit to suit as a condition of permitting them to do other than interstate business.

In this case it is *possible* for this court to construe the Minnesota statute as not applicable to suits on causes of action not arising in the business done in Minnesota, when such suit is against a railroad corporation having no line of railroad in Minnesota and doing no business therein except an interstate business. And this Court further has power to strike down a construction of the Supreme Court of Minnesota which is to the contrary.

The last two cases dealt with corporations which were transacting a purely local business in the state, which could only be done upon such conditions as the state saw fit to attach, but in this case where the business done was wholly interstate, the State of Minnesota could not lawfully attach the unreasonable and burdensome condition which its Supreme Court has read into the statute under attack.

This court, in the *International Harvester* case, used the following language:

> "True, it has been held time and again that a state cannot burden interstate commerce or pass laws which amount to the regulation of such commerce; but this is a long way from holding that the ordinary process of the court may not reach corporations carrying on business within the state which is wholly of an interstate commerce character. Such corporations are within the state, receiving the pro-

tection of its laws, and may, and often do, have large properties located within the state.

* * * * *

In *International Textbook Co.* v. *Pigg*, 217 U. S. 91, it was held that a law of Kansas which required the filing by a foreign corporation engaged in interstate commerce of a statement of its financial condition as a prerequisite of the right to do such business and which required a certificate from the Secretary of State showing that such statements had been filed as a condition precedent to the right of the corporation to maintain a suit in that state, was void. But that case did not hold, as we should be required to do to sustain the contention of the plaintiff in error in this case, that the fact that the corporation was carrying on interstate commerce business through duly authorized agents made it *exempt* from suit within the state by service upon such agents."

As above stated, however, that suit was in regard to a Kentucky transaction growing out of business there transacted, and the contention of plaintiff's counsel that because the business was interstate the company should be *exempt* from suit was wrong.

But the fact that a corporation, doing wholly interstate business, had property in a state which received the protection of its laws, would be no reason for holding that the company must be answerable in the courts of that state in suits on causes of action arising outside the state and not in any way connected with the business so transacted.

It would be contrary to justice to hold that a citizen of Kentucky who had there contracted with the Harvester Company to purchase a machine to be shipped into the state could not, in the event the Harvester Company refused to perform its contract, bring suit to recover damages without going to Illinois to do it. The reasoning

in the *Insurance* cases, where it was held that policies of insurance could not be written on the lives and properties of the citizens of a state without the company being sued in such state, on controversies arising out of such policies, would apply.

And if a citizen of Kentucky there contracted for the purchase of an agricultural machine to be delivered at some point outside of Kentucky, it might be argued that the agent with whom the contract was made in Kentucky ought to be held to be a proper agent for service of process in a suit arising out of the contract. However, in such a case, inasmuch as the contract was to be performed wholly outside of Kentucky and the witnesses would reside outside the state, it would appear that the rule should be that suit could not be begun in Kentucky.

But even if such a rule were laid down and suit permitted on contracts negotiated but not carried out in the state, that would only mean that the Santa Fe would be suable in Minnesota on shipments for which Jansen issued exchange bills of lading which by their terms take effect only when the shipment reaches the Santa Fe and the burden so imposed would not be great.

In the case at bar, however, the bill of lading introduced in evidence was issued at Isabel, Kansas, to a corporation of that state, and the suit is not maintainable on the theory that the bill of lading was issued or the shipment solicited in Minnesota.

But if a citizen of Kentucky or some nonresident of Kentucky while in Illinois, where the Harvester Company has its factory, should contract with the Harvester Company there for the delivery of machines within the State of Illinois, what possible reason would there be for holding that the nonresident or the Kentucky

citizen making such a contract was at liberty to go back to Kentucky and bring suit upon it?

Such a suit would be an unwarranted and unnecessary burden on the interstate commerce business of the Harvester Company, transacted partly in Kentucky, and there is no decision of this Court holding that a suit under such circumstances could be maintained.

V.

BURDEN ON INTERSTATE COMMERCE SHOWN BY PENDING LITIGATION AND PROPOSED LEGISLATION.

On page 35 of our opening brief, we called attention to the fact that within a very short space of time suits on forty-nine other freight shipments, involving movements over the Santa Fe, were brought in Minnesota.

On February 2, 1923, the Governor of Minnesota sent a message to the legislature of that state dealing with the effect of the statute in question, in which he pointed out that an examination of the calendars of the Minnesota courts in 67 of the 87 counties of the state disclosed that there are pending in those counties 1,028 personal injury cases in which damages aggregating nearly $26,000,000 are sought, all against foreign railroad corporations not operating within the State of Minnesota, and that in each of these cases the plaintiff is a nonresident of the state.

He also shows how the industry is conducted by a small number of lawyers who specialize in personal injury litigation and maintain a corps of traveling men who travel over the country and solicit this business for their principals.

The message of the Governor is printed in full as an

appendix to this brief, and while his main effort seems to be to point out to the legislature the burden so imposed on Minnesota taxpayers and litigants, the facts recited by him also strikingly show the burden imposed on interstate commerce and the solicitation of interstate traffic by agents of foreign lines of railroad within the State of Minnesota.

It will be noted also that the Governor urges upon the state the enactment of a law which will relieve the burden as to personal injury cases only.

A foreign corporation doing solely an interstate business is entitled to protection as to all classes of cases not arising in or out of business done in a state, and we are, therefore, asking this Court to give the complete relief which would not be afforded even if the bill in question should become a law before the case is decided by this Court.

We conceive it to be proper to call the message of the Governor to the attention of this Court for the reason that the constitutionality of a Minnesota statute is involved and in the determination of that question the general effect of the statute may properly be taken into consideration and the facts presented to the court in the same manner as that pursued in *Muller* v. *Oregon*, 208 U. S. 412, 420.

A state cannot require as a condition precedent to the maintenance of an off-line office for the solicitation of interstate railroad traffic that the corporation pay a license fee. *McCall v. California*, 136 U. S. 104; *N. & W. Ry. Co. v. Pennsylvania*, 136 U. S. 114.

But the rule is otherwise where other than interstate business is involved. *Pembina Mining Co. v. Pennsylvania*, 125 U. S. 181.

VI.

TO HOLD THAT A FOREIGN RAILROAD CORPORATION OWNING OR OPERATING NO RAILROAD IN MINNESOTA MAY SOLICIT INTERSTATE COMMERCE WITHOUT BEING EXPOSED TO SUIT ON CAUSES OF ACTION ARISING OUTSIDE THE STATE WOULD NOT BE IN CONFLICT WITH THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE FEDERAL CONSTITUTION.

The case of *Chambers* v. *B. & O. Company*, 207 U. S. 142, is cited by defendant in error on the proposition that no distinction between residents and nonresidents can constitutionally be made.

With this we agree, but there is no more reason for holding that a Minnesota citizen who made a contract in Kansas with the Santa Fe for transportation in Kansas should be permitted to sue for alleged breach in Minnesota than there is for holding that a Kansas resident making such a contract should be permitted to sue on it in Minnesota.

Of course, if a resident cannot bring suit against a foreign corporation transacting a wholly interstate business on a cause of action arising elsewhere, a nonresident could not claim it. That is settled by *Missouri Pacific R. R. Co.* v. *Clarendon Co.* 257 U. S. 533, 535, where the court said:

> "Under Section 2 of Article IV of the Federal Constitution, the citizens of each state are entitled to all privileges and immunities of citizens in the several states. This secures citizens of one state the right to resort to the courts of another, equally with the citizens of the latter state; but where the citizens of the latter state are not given a process for reaching foreign corporations, it is not apparent how noncitizens can claim it."

VII.

THE FACT THAT SHIPMENTS SOLICITED BY JANSEN MIGHT MOVE OVER OTHER ROADS INTO MINNESOTA WOULD NOT CONSTITUTE DOING BUSINESS BECAUSE IT WAS NOT THE PURPOSE OF THE CARMACK AMENDMENT TO EXTEND THE TERRITORIAL JURISDICTION OF THE COURTS.

Counsel for plaintiff in error, on page 15 of their brief, seek to liken this case to the *International Harvester* case, because shipments solicited might come into the State of Minnesota.

The reason harvesting machinery went into Kentucky was because the Harvester Company sent it there in response to orders received from Kentucky customers.

But Jansen's sole duty is to solicit business over the Santa Fe, which does not run into Minnesota. Neither he nor his employer would be interested in any part of the transportation after shipments left the line of the Santa Fe.

It is true that as to certain shipments originating on the Santa Fe, which ultimately might find their destination in Minnesota, the Santa Fe would be responsible for any loss, damage or injury to the shipment sustained either on its own lines or the lines running into Minnesota, but that would not affect in the slightest degree the question of whether or not the defendant was doing business in Minnesota.

This argument was advanced in the *Alexander* case, *supra* (227 U. S. 218), but the court said on page 227:

> "The provisions of the (Carmack) amendment had the effect of facilitating the remedy of the shipper by making the initial carrier responsible for the entire carriage, but the amendment was not intend-

> ed, as we view it, to make foreign corporations through connecting carriers liable to suit in a district where they were not carrying on business in the sense which has heretofore been held necessary to confer jurisdiction."

Clearly, the movement of shipments over other railroads into Minnesota has nothing to do with the question at all.

Conclusion.

It is established by the record that the business done by the Santa Fe in the State of Minnesota amounted to no more than solicitation. It also appears that only interstate freight and passenger traffic was solicited and that the cause of action in this suit did not arise in or out of any business transacted in Minnesota.

The statute as construed by the Minnesota courts and applied to this case, is, therefore, void, because in violation of the Fourteenth Amendment.

It is also void because in conflict with the Commerce Clause, for the reason that even when a foreign corporation is doing business within a state, provided the business it transacts is wholly interstate commerce, it cannot be compelled against its will to transact such business upon condition that it submit to suit on causes of action not arising in, or out of business transacted in said state. The fact that the Santa Fe was not "doing" but simply "soliciting" interstate business in Minnesota adds greatly to the reasons why such rule should be applied to this case.

The law is in no sense a reasonable regulation of the interstate commerce business transacted by foreign railroads in the state, nor has it any relation to such business. It is arbitrary and unreasonable and should be

struck down. Such action will remove an enormous burden now imposed upon the business of interstate solicitation, which is necessarily and properly carried on in Minnesota by railroads not running into said state, and will permit such solicitation to be carried on in a manner which will enable the solicitors for outside roads to compete with solicitors for Minnesota lines, which, beyond the borders of that state, are competitive with roads not running into Minnesota.

In addition to the above reasons, the statute is also void under the equal protection clause of the Fourteenth Amendment because the state cannot impose such a burden on interstate solicitation by outside railroad corporations without imposing the same burden on interstate solicitation by other classes of foreign corporations.

The judgment should be reversed.

Respectfully submitted,

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APPENDIX.

MESSAGE OF THE GOVERNOR OF MINNESOTA SENT TO THE LEGISLATURE OF THAT STATE, FEBRUARY 2, 1923.

A recent examination of the calendars of the district courts in sixty-seven of the eighty-seven counties of the state, disclosed that there are pending in those counties, 1,028 personal injury cases in which damages aggregating nearly twenty-six million dollars are sought, all of which arose outside of the State of Minnesota, are against foreign railroad corporations—common carriers, who do not operate within the State of Minnesota and in which the plaintiffs are nonresidents of the State of Minnesota. These cases were started by a small number of lawyers who specialize in personal injury litigation and maintain a corps of traveling men who travel over the country and solicit this class of cases for their principals. This industry is of comparatively recent origin—apparently taking its start from the decision of the Supreme Court of Minnesota in 1906, in the case of *Cummings* v. *Edwards-Wood Co.* 95th Minn. 118. The procedure originally resorted to was to start a case, and at the same time issue a garnishment summons against each railroad corporation operating within the State of Minnesota, for the purpose of catching and holding any credit traffic balance such corporation might be owing to the foreign corporation against which the suit was brought. This procedure, in the event that sufficient money was caught by the garnishment to warrant proceeding with the case, would result in giving jurisdiction to the extent of the amount of money so impounded. As there are about ten railroads operating within the state, the procedure was rather a cumbersome and expen-

sive one and sometimes results in disclosures showing that there were no credit balances, and the case would fail. To make the matter easier, the legislature was induced, and perhaps unwittingly, to enact Chapter 218 of the Laws of 1913, which appears as the proviso in subsection 3 of Section 7735. General Statutes of Minnesota, 1913, as follows:

> "Provided that any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic, or either thereof, over the lines outside of this State, may be served with summons by delivering a copy thereof to such agent."

Since the enactment of Chapter 218, the procedure in the class of cases mentioned has been a very simple one. The Supreme Court has said, with reference to the application of both the attachment and garnishment statutes to cases of tort:

> "In *Davidson* v. *Owens, supra*, the court took note of the sweeping language of the statute and while doubting the advisability of permitting the use of the writ of attachment without restriction, squarely held that, although Minnesota stood alone in extending the process to actions in tort, such was the effect of the words 'in an action for the recovery of money.'
>
> That decision stood unchallenged for six years and then the legislature deliberately preserved the same general language with reference to the writ of attachment but withheld its use in certain specified actions, and at the same time struck out the limitation which up to that time had *restricted* the garnishment process and employed the general term 'any action.' There is no getting away from the intention of the lawmakers in making these changes. It was intended to open the door, in garnishment proceedings to all classes of actions, and to close it with reference to certain actions in attachment proceedings.
>
> Thus the matter has stood without change. Although the process may be subject to abuse, and although most of the other states may have declined to go so far, our lawmakers have spoken clearly,

this court has determined what was enacted and if a change is desired the proper tribunal for that purpose is the lawmaking body."

Cummings v. *Edwards-Wood Company*, 95 Minn. 118.

With reference to the use of the amendment made by Chapter 218 of 1913, the court has said:

"We may concede the undesirability of litigating such a case as this so far from the place where it arose. It seems to us, however, that the question is not one of jurisdiction and that relief must be sought from the legislature and not from the courts."

Rishmiller v. *Denver & R. G. Co.* 134th Minn. 261, 265.

A statute that would permit cases of the kind under discussion to be brought in the courts of this state by residents thereof, and at the same time prohibit non-residents of the state from making a similar use of our courts would violate Section 2 of Article IV of the Constitution of the United States, which provides that:

"The citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several States."

As to the effect of the above quoted provision, Mr. Justice Miller, in the Slaughter-House cases, 16 Wall. 77, said:

"The sole purpose of this constitutional provision was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, or as you limit, or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

The leading case on the subject is *Chambers* v. *B. & O. R. Co.* 207 U. S. 142. In the latter case the court said:

"But, subject to the restrictions of the Federal

> Constitution, the State may determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them. The State policy decided whether and to what extent the State will entertain in its courts transitory actions, where causes of action have arisen in other jurisdictions. Different states have different policies, and the same state may have different policies at different times. But any policy the State may choose to adopt must operate in the same way on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other. Any law by which privileges to bring actions in other courts are given to its own citizens and withheld from citizens of other states is void because in conflict with the supreme law of the land."

In *State* v. *District Court of Waseca County*, 126th Minn. 501, 505, our Supreme Court, after quoting the language last above, said:

> "If it were the policy of this State, evidenced by the decisions of its courts, or fixed by statute, to close its courts, both as to citizen plaintiffs and noncitizen plaintiffs against transitory causes of action for torts committed in other states, a refusal to entertain jurisdiction would not violate the Constitution. Such is not the policy of this State. If a citizen of our State has a cause of action for a tort committed against him in Iowa by the North Western Railway Co. the doors of our courts are not closed against him."

It is very clear from the foregoing that a statute prohibiting nonresidents from bringing actions in our courts for torts that occurred in other states must be made to apply equally to our own citizens.

Attached hereto, is a draft of a statute that conforms to this principle. Under the attached draft, no attempt is made to prevent either citizen, or noncitizen, of the state from bringing an action to recover damages for personal injuries founded upon negligence occurring anywhere in any state traversed by common carriers operat-

ing in this state, and upon which personal service of summons can be had within this state. The effect of the proposed draft is to prevent personal injury cases, occurring in California, Massachusetts, Florida and other states, on foreign railroads, not operating within the State of Minnesota from being brought in the courts of this state.

It is possible that a citizen of Minnesota may occasionally be injured on a railroad in foreign states, which railroad does not operate in Minnesota, but in actual practice it is rather a rare occurrence, and whatever inconvenience the Minnesota citizen would suffer in such an isolated case, is not at all to be compared to the inconvenience suffered by citizens of Minnesota having litigation in our courts and entitled to a speedy disposition thereof, nor is it to be compared to the intolerable tax burden imposed upon the taxpayers of the State of Minnesota by the wholesale importation into the State of Minnesota of thousands of these cases—literally swamping the courts of the state. As has been said by our Supreme Court in the Cummings case, 95th Minn. 118:

> "If a change is desired the proper tribunal for that purpose is the lawmaking body."

And, as repeated in *Rishmiller* v. *Denver & R. G. Co.* 134 Minn. 261, 265:

> "The relief must be sought from the legislature and not from the courts."

No one can advance a single sound argument in favor of trying in the courts of this state, at the expense of our taxpayers, cases of nonresidents against nonresident corporations seeking the recovery of damages for personal injuries occurring in the freight yards of San Francisco, New Orleans or Boston.

During the war, under the Railroad Administration Act the Director General of Railroads, McAdoo, issued an

order that put a stop to this practice during the existence of the Railroad Administration. Many years ago this practice had become so intolerable in the federal courts that Congress stepped in and put an end to it in these courts by providing in Section 51 of the Judicial Code that:

> "No civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant."

and by providing in Section 53 of the same Code that:

> "When a district contains more than one division every suit not of a local nature against a single defendant, must be brought in the division where he resides."

The only persons affected will be a small number of attorneys who make a specialty of personal injury litigation, and who keep traveling men on the road for the purpose of securing employment in cases of the class under discussion herein. The persons benefited are the taxpayers of the State of Minnesota, and Minnesota litigants who, when the suggested law becomes operative, will have an opportunity of having their litigation speedily determined in the courts of their own states, for the maintenance of which they are taxed.

I urge very earnestly that the legislation suggested be enacted at the earliest possible moment.